

CHARLES SIMMONS,

V.

Defendants.

) Civil Action No. 10 – 1683
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) Chief Magistrate Judge Lisa Pupo Lenihan
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I. RECOMMENDATION

II. REPORT

The Prison Litigation Reform Act of 1996, 28 U.S.C. §1915(b) as amended April 26, 1996, requires that prisoners who cannot pay the full filing fee immediately, submit an initial partial filing fee and the balance in installment payments. Consistent with that Act, the court entered an Order (ECF No. 8) directing Plaintiff to either: sign an authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into the court; or

sign a form indicating that, whether for financial reasons or otherwise, he chose to withdraw the action. The Order further instructed Plaintiff to return the signed authorization or notice of withdrawal within twenty days.

Over twenty days have passed and Plaintiff has not returned a signed notice of the withdrawal of this action. Neither has he returned a signed authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into court. Because the court will not direct the prison to withdraw money from the Plaintiff's institutional account and pay it into the court until the Plaintiff authorizes such withdrawal, the initial partial filing fee in this case can not be paid.

Plaintiff's refusal to comply with the Court's Order make it impossible for the court to comply with Congress' amendments to the law regulating the manner in which in forma pauperis prison litigation is to be administered. Because Plaintiff has not complied with this court's order, it must be concluded that he no longer desires to maintain this action.

As a consequence, it is respectfully recommended that this action be dismissed, without prejudice. Plaintiff should be permitted to re-file this action within the applicable statute of limitations period by paying the full filing fee of \$350.00.

In accordance with the Magistrate Judges Act, 28 U.S.C. Section 636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties are allowed fourteen (14) days from the date of service to file written objections to this report. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute a waiver of any appellate rights.

Dated: February 9, 2011

/s/ Lisa Pupo Lenihan
Lisa Pupo Lenihan
Chief U.S. Magistrate Judge

cc: Charles A. Simmons
835999
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219